

Message Text

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ACTION EUR-25

INFO OCT-01 IO-14 ISO-00 SAJ-01 CIAE-00 COME-00 EB-11

INR-10 LAB-06 NSAE-00 RSC-01 SIL-01 DODE-00 PM-07

H-03 L-03 NSC-07 PA-04 PRS-01 SP-03 SS-20 USIA-15

OMB-01 DRC-01 (ISO) W

----- 085146

R 191639Z APR 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC 1883

INFO AMCONSUL BREMEN

AMCONSUL DUSSELDORF

AMCONSUL FRANKFURT

AMCONSUL HAMBURG

AMCONSUL MUNICH

AMCONSUL STUTTGART

USMISSION BERLIN

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A.E. 11652: N/A

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TAGS: ELAB, GW

SUBJECT: BUNDES RAT DISAPPROVES GOVERNMENT BILL ON
CODETERMINATION.

REF: BONN 01320, 04004, 04326

1. SUMMARY. THE GOVERNMENT-PROPOSED BILL ON CODETERMINATION PROMISES TO BE A HOTLY CONTESTED ISSUE DURING THE NEXT SEVERAL MONTHS. IT HAS NOT ONLY PROVOKED STRONG OPPOSITION BY TRADE UNIONS, EMPLOYERS' ORGANIZATIONS, THE CDU/CSU AND INFLUENTIAL QUARTERS WITHIN THE SPD, IT IS ALSO MEETING WITH MAJOR DIFFICULTIES IN THE BUNDES RAT. THE FRG'S UPPER HOUSE HAS DISAPPROVED THE PROPOSED BILL BECAUSE OF "SERIOUS DEFICIENCIES". AT THE SAME TIME THE BUNDES RAT MAJORITY ALSO DECLARED THAT THE BILL REQUIRES BUNDES RAT CONSENT IN THE FINAL READING, THUS CREATING THE DANGER OF A CONFLICT BETWEEN THE BUNDES RAT AND THE FEDERAL GOVERNMENT WHICH DENIES THAT CONSENT OF THE BILL BY THE BUNDES RAT IS REQUIRED. END SUMMARY.

2. THE BUNDES RAT ON APRIL 5 ADOPTED A RESOLUTION WARNING THE FEDERAL GOVERNMENT NOT TO INTRODUCE THE BILL INTO THE BUNDESTAG BECAUSE OF CERTAIN "SERIOUS DEFICIENCIES" WHICH WOULD MAKE IT IMPOSSIBLE FOR THE BUNDES RAT TO APPROVE THE BILL IN THE PROPOSED VERSION. THE VOTE WAS 21 TO 20 WITH THE CDU/CSU CONTROLLED STATES ALIGNED AGAINST THE STATES LED BY THE SPD OR A SPD/FDP COALITION. FURTHERMORE THE BUNDES RAT EMPHASIZED THAT THE BILL REQUIRES FINAL CONSENT BY THE BUNDES RAT. (BILLS REQUIRING BUNDES RAT CONSENT CANNOT BE IMPLEMENTED IF REJECTED BY THE BUNDES RAT). SOME SPD/FDP STATES ALSO HOLD THE VIEW THAT THE CODETERMINATION BILL REQUIRES BUNDES RAT CONSENT.

3. THE RESOLUTION POINTED OUT THAT THE PROPOSED BILL FAILS TO MEET A NUMBER OF ESSENTIAL PRINCIPLES AND HAS THE FOLLOWING SPECIFIC DEFICIENCIES:

A) OPPONENTS OF INDIRECT ELECTIONS OF LABOR REPRESENTATIVES, NOTING THAT THE PRINCIPLE OF DIRECT ELECTIONS AS PROVIDED FOR UNDER THE INDUSTRIAL RELATIONS ACT (BETRIEBSVERFASSUNGSGESETZ) HAS STOOD THE TEST IN LIMITED OFFICIAL USE

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PRACTICE FOR 20 YEARS, FOUND THAT THE PROPOSED PROCEDURE FOR THE ELECTION OF LABOR REPRESENTATIVES TO THE BOARD OF SUPERVISORS VIOLATES THE PRINCIPLE OF SELF-DETERMINATION FOR WORKERS. THE USE OF ELECTORS WILL MAKE IT IMPOSSIBLE FOR THE WORKERS TO INDEPENDENTLY CHOOSE THEIR REPRESENTATIVES ON THE BOARD OF SUPERVISORS.

B) PROTECTION OF THE REPRESENTATION RIGHTS OF MINORITY

UNION ORGANIZATIONS IS INADEQUATE. SINCE THE LABOR REPRESENTATIVES ON THE BOARDS OF SUPERVISORS ARE CHOSEN INDIRECTLY BY ELECTORS, THE POSSIBILITY OF ELECTION OF REPRESENTATIVES FROM THE SMALLER UNIONS SUCH AS THE GERMAN SALARIED EMPLOYEES UNION AND THE AFFILIATES OF THE CHRISTIAN TRADE UNIONS IS ALL BUT ELIMINATED. THEREFORE GENUINE PROTECTION FOR MINORITY RIGHTS COULD BE GUARANTEED ONLY UNDER DIRECT ELECTIONS USING THE PRINCIPLE OF PROPORTIONAL REPRESENTATION.

C) THE BILL DOES NOT GIVE THE WORKERS A RIGHT TO SELECT THE LABOR REPRESENTATIVES FROM THE OUTSIDE, I.E. REPRESENTATIVES FROM THE UNION HEADQUARTERS. THE EXCLUSIVE RIGHT OF THE TRADE UNIONS TO NOMINATE THEIR OWN REPRESENTATIVES PRACTICALLY MEANS SELECTION BY THE UNION HEADQUARTERS. THE BUNDESRAT HOLDS THE VIEW THAT WORKERS MUST BE ALLOWED TO NOMINATE UNION REPRESENTATIVES WHO SERVE AS LABOR MEMBERS ON THE BOARD OF

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SUPERVISORS.

D) THE BILL DOES NOT PROVIDE FOR GENUINE REPRESENTATION OF MANAGERIAL EMPLOYEES (LEITENDE ANGESTELLTE) ON THE BOARD OF SUPERVISORS. MOREOVER, THE FEDERAL LABOR COURT DECISION OF MARCH 5, 1974, ON THE DEFINITION OF MANAGERIAL EMPLOYEES HAS PUT ESSENTIAL ELEMENTS OF THE BILL REGARDING LEITENDE ANGESTELLTE INTO QUESTION.

E) THE PROPOSED REGULATIONS TO SETTLE TIE VOTES ARE INAPPLICABLE AND IMPRACTICABLE. THEY LEAD TO A DELAY ON MAJOR DECISIONS, PARALYZE AND ENDANGER THE FUNCTIONING OF THE ENTERPRISE, THE COMPETITIVE POSITION AND SUBSEQUENTLY JOBS. THE RIGHT OF UNIONS AND EMPLOYERS TO ENGAGE IN FREE COLLECTIVE BARGAINING AS GUARANTEED UNDER THE CONSTITUTION, OCCUPATIONAL FREEDOM AND THE PROTECTION OF PROPERTY AS WELL AS THE PRINCIPLES OF THE SOCIAL MARKET ECONOMY REQUIRE A CLEAR AND PRACTICABLE SOLUTION OF TIE SITUATIONS.

F) THE BILL FAILS TO TAKE INTO ACCOUNT THE IMPACT OF CODETERMINATION ON CORPORATION LAW, ECONOMIC LAW, THE LAW OF THE EUROPEAN COMMUNITY AND THE COMPETITIVE SITUATION OF GERMAN EMPLOYERS IN THE WORLD MARKET.

4. UNIONS AND EMPLOYERS' ASSOCIATIONS ARE HEAVILY CAMPAIGNING AGAINST THE BILL, BUT THE FEDERAL GOVERNMENT IS STILL DETERMINED TO PUSH IT THROUGH, PERHAPS WITH SOME MINOR MODIFICATIONS. CONFRONTED WITH THE UNEXPECTEDLY STRONG NEGATIVE UNION REACTION, THE CHAIRMEN OF THE SPD/FDP COALITION FACTIONS IN THE BUNDESTAG,

WEHNER AND MISCHNICK, MET IN MID-MARCH AND REPORTEDLY AGREED ON CERTAIN AMENDMENTS IN FAVOR OF UNION DEMANDS TO BE ACHIEVED DURING THE DELIBERATIONS ON THE BILL BY THE BUNDESTAG COMMITTEES. IT IS QUESTIONABLE, HOWEVER, IF SUCH FDP CONCESSIONS WOULD ELIMINATE UNION OPPOSITION. FEDERAL INTERIOR MINISTER GENSCHER HAS MADE IT CLEAR THAT THE FDP STANDS BY THE COMPROMISE BUT ONLY IF THE PROPOSED BILL IS NOT CHANGED IN SUBSTANCE. GENSCHER HAS REACTED CLEVERLY TO MANAGEMENT CHARGES THAT PARITY CODETERMINATION IS NOT COMPATIBLE WITH THE RIGHT TO DISPOSE OF PRIVATE PROPERTY GUARANTEED UNDER THE CONSTITUTION. HE MAINTAINED THAT THIS RIGHT IS LIMITED OFFICIAL USE

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GUARANTEED BY PROVISIONS GIVING THE GENERAL STOCKHOLDERS' MEETING THE LAST SAY IN CASE OF A TIE VOTE ON THE BOARDS OF SUPERVISORS. KARL HEINZ JANZEN, A MEMBER OF THE METALWORKERS UNION'S NATIONAL EXECUTIVE BOARD, EMPHASIZED THAT ALTHOUGH THE METALWORKERS DO NOT ACCEPT THE PRESENT COMPROMISE BILL BECAUSE IT GIVES THE STOCKHOLDERS THE FINAL SAY, THEY WOULD NEVERTHELESS STRONGLY OPPOSE THE ARGUMENT THAT THE BILL IS UNCONSTITUTIONAL.

5. DEFENDING THE PROPOSED CODETERMINATION BILL ON OTHER GROUNDS, FINANCE MINISTER HELMUT SCHMIDT IN AN INTERVIEW WITH A HERALD TRIBUNE REPORTER IN MARCH NOTED THAT CODETERMINATION WOULD CONTRIBUTE TO LABOR STABILITY BY GIVING GERMAN TRADE UNION WORKERS AND EMPLOYEES A GREATER SAY IN THE MANAGEMENT OF FIRMS AND IN THE GERMAN ECONOMY. HE SAID THAT DESPITE ORIGINAL FEARS AND APPREHENSIONS OF GERMAN ENTREPRENEURS, CODETERMINATION HAD ENHANCED AND NOT HAMPERED THE GERMAN STEEL INDUSTRY IN BECOMING GREAT AND EFFECTIVE AGAIN AFTER THE WAR. WHEN QUESTIONED, IF CODETERMINATION WOULD LEAD TO A SLOW-DOWN OF INVESTMENTS AND A DRIVE BY GERMAN

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BUSINESSMEN TO SET UP OPERATIONS IN OTHER LESS DEVELOPED
COUNTRIES, OR IN THIRD AREAS, SCHMIDT REPLIED QUOTE I
DO NOT FORESEE A CONSIDERABLE DEGREE OF A DEVELOPMENT
OF THAT KIND UNQUOTE.

6. COMMENT. THE FEDERAL GOVERNMENT IS DETERMINED TO PUSH THE BILL THROUGH WITHOUT MAJOR CHANGES IN ITS SUBSTANCE. THE GOVERNMENT MUST BE AWARE OF THE DIFFICULTIES WHICH IT MAY ENCOUNTER WITH TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS AND MAJOR PARTS OF THE SPD BUNDESTAG FACTION. IT PROBABLY WILL NOT SHY AWAY FROM A CONFRONTATION WITH THE BUNDESRAT BY DENYING THE NEED FOR BUNDESRAT CONSENT. (EXPECTED BUNDESRAT ACTION ASKING THE FEDERAL CONSTITUTIONAL COURT FOR CLARIFICATION OF THE CASE WOULD NOT DELAY IMPLEMENTATION OF THE LAW IF IT IS SIGNED BY THE FEDERAL PRESIDENT). IN THE BUNDESTAG, MAJOR GROUPS OF THE SPD FACTION, BECAUSE OF THEIR CLOSE LINKS WITH THE DGB, INSIST UPON AMENDMENTS WHICH WOULD TOUCH THE SUBSTANCE OF THE COMPROMISE. IT IS DIFFICULT TO EVALUATE TO WHAT EXTENT "PROGRESSIVE ELEMENTS" IN THE FDP FACTION WOULD BE WILLING TO YIELD TO COMBINED UNION AND SPD PRESSURE. IN VIEW OF THE TIGHT SCHEDULE OF THE BUNDESTAG IT IS UNCERTAIN WHETHER THE BILL WILL COME UP FOR A FIRST READING BEFORE THE BUNDESTAG PLENUM PRIOR TO THE SUMMER RECESS. END COMMENT.

HILLENBRAND

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LABOR RELATIONS, LAW, CHAMBERS OF COMMERCE, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 19 APR 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974BONN06261
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740091-1221, D740100-0543
From: BONN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740430/aaaabaua.tel
Line Count: 353
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 7
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: BONN 01320, 04004, 04326
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 20 MAR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <20 MAR 2002 by collinp0>; APPROVED <07 MAY 2002 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: BUNDESRAT DISAPPROVES GOVERNMENT BILL ON CODETERMINATION.
TAGS: ELAB, GE, US
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005